

RECEIVED  
HENRY BRENDZEL CENTRAL FAX CENTER  
DEC 08 2004

PAGE 01

Henry Brendzel

<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>		Complete if Known	
		Application Number	09/700,430
		Filing Date	4/19/2000
		First Named Inventor	David A. Kapilow
		Examiner Name	V. Paul Harper
		Group/Art Unit	2644
Total number of pages in this Submission: this page, plus	3	Attorney Docket ID	Kapilow 1999-0096B

**ENCLOSURES (check all that apply)**

If Fee Form is not included, but a fee is due,  
the Commissioner is Authorized to charge  
Deposit Account No 500732 of  
Henry T. Brendzel, and consider that  
appropriate requests have been made.

Fee Form ( Check included)

Amendment/Response

After Final

Affidavit(s)/Declaration(s)

Extension of Time Request

Information Disclosure Statement

Certified Copy of Priority document(s)

Response to Missing Parts/  
Incomplete Application

Response to Missing Parts  
under 37 CFR 1.2 or 1.53

Declaration (no Missing Parts Notice)

Assignment Papers  
(for an Application)

Drawing(s)

Licensing-related Papers

Petition Routing Slip (TO/SB/69)  
and Accompanying Petition

To Convert a Provisional Application

Power of Attorney, Revocation or  
Change of Correspondence Address

Express Abandonment

Terminal Disclaimer

To Convert to Statutory Invention  
Registration

Postcard(s)

Small Entity Statement

Request for a Refund

After Allowance Communication  
to group

Appeal Communication to Board of  
Appeals and Interferences

Appeal Communications to Group  
(Appeal Notice, Brief, Reply Brief)

Proprietary Information

Status Letter

Other

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm or Individual Name

Henry T. Brendzel

Signature

Date

12/8/04

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as service in an envelope  
addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA22313-1450 on this date: \_\_\_\_\_

Name of Person Signing

Signature

Date

**CERTIFICATE OF FACSIMILE**

I hereby certify that this correspondence is being electronically transmitted by facsimile to the United States Patent Office:

Henry Brendzel

Name of Person Signing

Signature

12/8/04

Date

Kapilow 1999-0096B

**RECEIVED  
CENTRAL FAX CENTER  
DEC 08 2004**

**IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE**

**Patent Application**

Inventor(s)	David A. Kapilow	Case Name	Kapilow 1999-0096B
Filing Date	4/19/2000	Serial No.	09/700,430
Examiner	V. Paul Harper	Group Art Unit	2644
Title	Method and Apparatus for Performing Packet Loss or Frame Erasure Concealment		

**COMMISSIONER FOR PATENTS**  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

**AMENDMENT**

**R E M A R K S**

This is in response to an Office action dated September 20, 2004.

Claim 1 is provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1 and 12 of copending application No. 09/700,524. Applicant respectfully traverses.

First, a provisional rejection may be applied based on an earlier filed, copending, unpublished application. MPEP 706.02(f)(2). Since the '524 copending application was filed on the same day as the instant application, it is not an earlier filed application and, therefore, it is not subject to a provisional rejection in view of the '524 application.

Additionally, it is respectfully submitted that the rejection is at least premature. Even without addressing the merits of the Examiner's assertion as to obviousness:

- (a) it is not known whether any claims in the '524 application will issue,
- (b) it is not known what the issued claims will define,
- (c) consequently it is not known whether the Examiner will even wish to assert obviousness, or is asserted, whether the Examiner is correct in such an assertion, and